

# Module

## Introduction

Intro-1

Module 2 slide 2-1

## ***Target Audience***

- Child Support Workers who Handle Cases Involving the Military

## ***Administrative Matters***

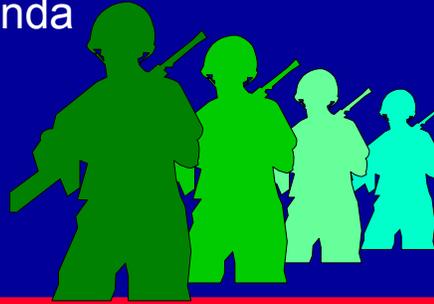
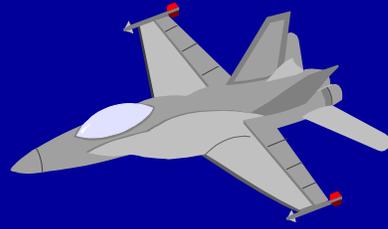
- Class hours
- Breaks
- Lunch
- Lunch/snack facilities
- Restroom location
- Phone location
- Emergency exits
- Emergency phone no.
- Parking
- Smoking
- Pager/Cell phone
- Attendance roster
- Name badges/tents

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## Summary

- Target audience
- Course goals & objectives
- Format of Trainer Guide
- Training agenda



Intro-4

Module 2 slide 2-3

# **Module 1**

## Overview of the Military

## ***Organization of the Military***

- Department of Defense (DoD)
- Military Departments
  - Dep't of the Army
  - Dep't of the Navy (includes Marine Corps)
  - Dep't of the Air Force
- Dep't of Homeland Security (includes Coast Guard)

# Organization

WHERE IS SGT SMITH?



## ***Military Authority***

- Rank
- Pay Grade
- Source of Authority
  - Law
  - Regulation
  - Policy
  - Custom

## ***When Member Fails to Respond***

- Contact unit commander
  - Recognize limitations of command assistance
  - Identify action you are seeking

## ***Practice Tips***

- Explain Thoroughly
- Don't Threaten
- Humanize the Situation
- Move Up the Chain-Of-Command
- Be
  - Respectful
  - Reasonable
  - Understanding

## ***Military Resources***

- Installation/Command Legal Offices
- Family Advocacy/Family Life Centers
- Identification Card Facilities
- Medical Treatment Facilities
- Internet

**HELP!**

**HELP!**

**HELP!**

## ***Military Rules and Regulations***

- Federal and State Law
- Dep't of Defense Regulations
- Service Regulations
- Supplements
- Policy Memoranda

## ***Summary***

- Organization of military
- Authority of commanders
- Useful military resources
- Rules and regulations governing military re: child support

## Module 2



## Military Locate Procedures

Intro-14

Module 2 slide 2-1

## ***Federal Locate Regulations (1)***

45 CFR § 303.3(a) defines Location:

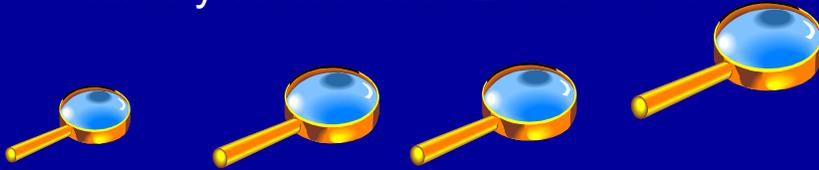
- Info Concerning NCP's Physical Location
- Info Concerning NCP's Employer & Assets
- That is Sufficient & Necessary to Take the Next Necessary Action

## ***Federal Locate Regulations (2)***

- IV-D Agency must Attempt Locate when It is *Necessary to take Necessary Action*
- Federal Locate Timeframe is 75 Days
- Repeat Failed Locate Efforts as Appropriate
- State must Create Guidelines Defining *Diligent Efforts to Serve Process*

## ***Locate Resources for Military***

- Local & State IV-D Locate Resources
- Expanded FPLS
- Local Military Resources
  - Military Installation
  - Legal Assistance Office
- Military World Wide Locator Services



## ***Summary***

- Federal locate regulations governing IV-D cases
- Local and national military locate resources
- State and federal civilian locate resources for military

## Module 3



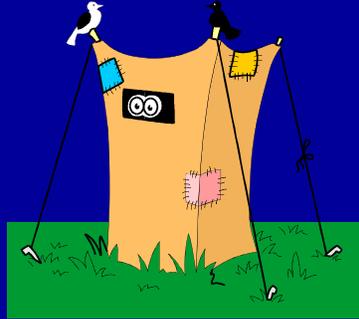
### Service of Process on Military Personnel

## *Types of Jurisdiction*

- Personal Jurisdiction
  - power over persons
  - requires notice
- In Rem Jurisdiction
  - power over things (bank accts, property)
  - requires notice



Personal jurisdiction over the defendant service member may be a challenge.



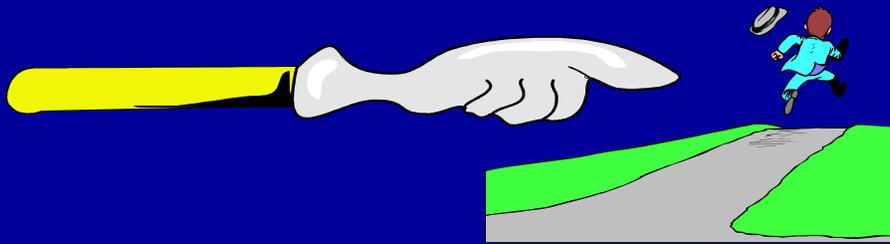
## ***Obtaining Personal Jurisdiction Over Military Member***



- Domicile
  - Legal residence at time of entry into service (state income tax, drivers license)
  - LES reflects domicile
  - Member can change domicile
- Physical Residence
- State Long Arm Statutes, incl. UIFSA

## ***Long-Arm Jurisdiction***

- Service of process in the state
- Consent
- Lived with child in the state
- Lived in the state & provided prenatal expenses or support



## ***LONG-ARM JURISDICTION***

- Child is in forum state due to nonresident's acts or directives
- Child may have been conceived in forum state
- Nonresident asserted parentage in the [putative father registry] in forum state
- Another constitutional basis

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### LONG ARM JURISDICTION (cont)

Continuing with the eight bases for asserting personal jurisdiction

- 1) The child resides in the State as a result of the acts or directives of the individual
- 2) The individual engaged in sexual intercourse in the State and that act of intercourse may have resulted in the conception of the child
- 3) The individual asserted parentage in the putative father registry for the State
- 4) There is any other basis consistent with the constitutions of the State and the United States for the exercise of personal jurisdiction

## ***United States Installations***

- Installations
  - Open
  - Closed
- Exclusive Jurisdiction
- Partial Jurisdiction
- Concurrent Jurisdiction

# Voluntary Acceptance of Service

Legal Office

Military Member

Commander



## ***Overseas Methods of Service***

- Service by Mail
- Treaty or Convention
  - Hague Convention on Service
  - Central Authority
- Service by Agent
  - UIFSA
- Voluntary Acceptance of Service
- Letter of Request



## ***Service on Board a Ship***

- Service by Mail
- Voluntary Acceptance
- Command Assistance



## ***Exercise Scenarios***

- Spot Issues
- Open Discussion
- What if?
- Questions?

## ***Summary***

- Personal jurisdiction and in rem jurisdiction
- Long arm jurisdiction
- Military installations with exclusive federal jurisdiction vs. concurrent or proprietary jurisdiction
- Service of process
  - on U.S. installations
  - on overseas installations
  - on board a ship

# Module 4



## The Servicemembers Civil Relief Act

## ***Scope of the SCRA***

- Active Military
  - Army, Navy, Air Force, Marines, Coast Guard
- Not Applicable To:
  - Civilian Employees
  - Retirees
  - DoD Contractors
  - Dependents



## ***Stay of Civil Proceedings***

- Applies to Judicial AND Administrative Proceedings
- Is person active military?
- Is person unavailable due to military service?
  - DoD Directive 1327.5

## ***Stay of Civil Proceedings (cont'd)***

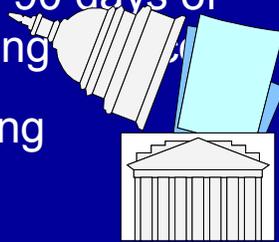
- Does member's absence have a material effect on the proceeding?
  - Is member represented by counsel?
  - Do parties agree to facts?
  - Is action only for temporary modification of support?
- If answer is yes to any = may deny stay
- If answer is no & motion for stay by member = must grant stay

## ***Default Judgment Under SCRA***

- Agency files Affidavit - Not in Service
  - Court can enter a default judgment
  
- Agency fails to file Affidavit
  - Any default judgment is voidable
  
- Agency files Affidavit - Is in Service
  - Court must appoint attorney to represent member

## ***Reopening a Default Judgment Under the SCRA***

- Court entered judgment during member's military service or within 60 days
- Military member/attorney files application to reopen within 90 days of service termination OR during
- No appearance in proceeding



## ***Appointed Counsel***

- Defendant Not in Service - Must Appoint Prior to Default Judgment
- Defendant Is in Service but No Appearance - May Appoint
- Appointed Attorney:
  - Protects Service Member's Rights
  - Determines Status and Seeks Stay
- Can't Waive Rights or Bind Service Member

## ***Stay or Vacation of Judgments and Attachments***

- Material Effect
- Action Must Have Arisen:
  - Prior to;
  - During; or
  - Within 90 days after service
- Reservists and Downward Modification

## ***Tolling the Statute of Limitations***

- Tolling
  - Self-executing
  - No material effect need be shown



## ***Interest Under the SCRA***

- 6% Interest Rate Cap
  - Only pre-service obligations
  - Material effect on ability to pay the obligation
  - Case-by-case determination
  - Not automatic



## ***Exercises/Questions***

- Read Scenarios
- Answer Questions
- Ask Questions!

## *Summary*

- Servicemembers Civil Relief Act
  - Req'ts re: availability and material effect
  - Stay of proceedings under SCRA
  - Default judgment
  - Stay of enforcement of judgment under SCRA
  - Role of appointed counsel
  - Tolling of statute of limitations
  - Maximum interest rate under SCRA

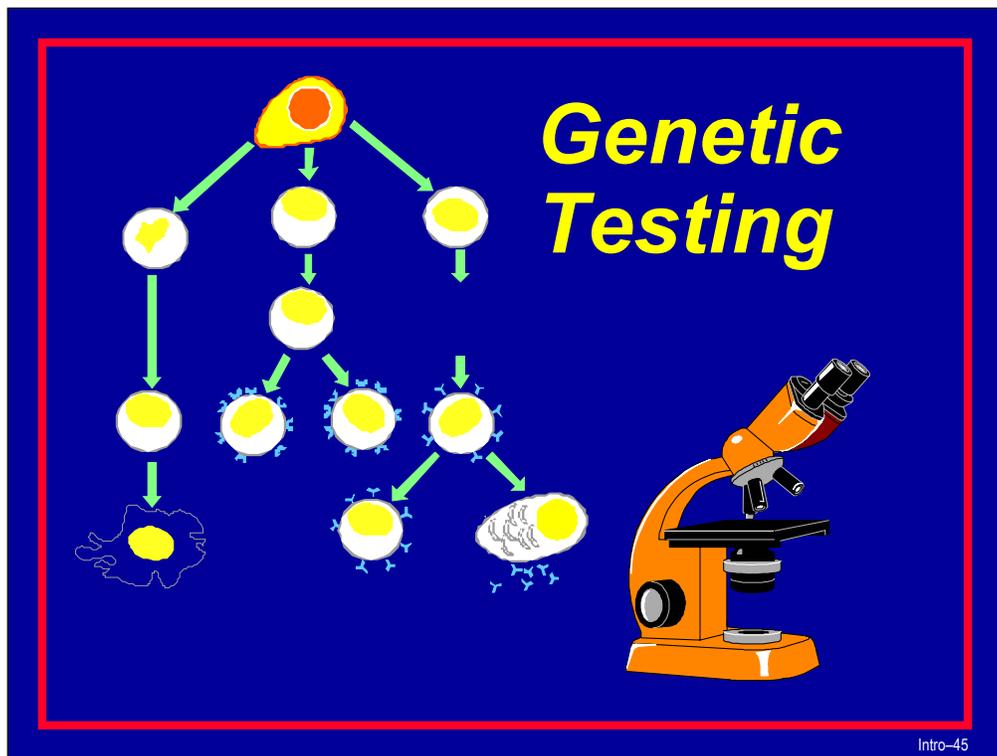
# **Module 5**

## Obtaining Evidence From the Military

## ***Paternity Establishment***

- Considered a Civilian Matter
- Moral and Legal Obligation of Members
- Commander Obligations on Inquiry





Intro-45

Paternity issues - establishing paternity against a military member - just the same as other putative fathers. You either need their consent and cooperation or a court order.

## ***Financial Information***

- FPLS
- DFAS
  - Historical Pay Information

## ***Medical Information***

- Defense Manpower Data Center

## ***Financial/Medical Information***

- Military Member
- Commander

## ***Privacy Act and FOIA***

### ■ Privacy Act

- Privacy Act Prevents Release of Inform.

### ■ FOIA

- FOIA is a Disclosure Statute
- Exemptions Prevent Release
- Exceptions Overcome the Exemptions
  - e.g., law enforcement purpose

## ***Evidence From Overseas Locations***

- Information on Members Overseas is Usually in the United States
- Physical Evidence Overseas is More Difficult

## ***Hague Convention on Taking Evidence Abroad in Civil or Commercial Matters***



Intro-49

Overseas - No special rules on accommodating military just because they are overseas or out of state. If you have an uncooperative service member who is under no court order - Hague Convention on taking evidence is about the only recourse.

## ***Evidence From Overseas Locations (cont'd)***

- Department of State Information

## ***Exercise Scenarios***

- Read Scenarios
- Answer Questions
- Ask Questions

## ***Summary***

- Compliance with genetic testing orders
- Resources for obtaining financial and medical information
- The Hague Convention on Taking Evidence Abroad in Civil or Commercial Matters

# **Module 6**

## Military Establishment Procedures

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Module 6 slide 6-1

## ***Federal Reg re: Paternity Establishment***

45 CFR § 303.5 – In all Cases where Needed:

- Offer Voluntarily Acknowledgment OR
- Establish Paternity by Legal Process
- Upon Request in Contested Case, Require Genetic Testing
- Seek Default Orders when Appropriate

## ***Federal Regs re: Establishment of Support Obligations***

- IV-D Agency must Establish Paternity when Necessary
- Use Appropriate State Laws & Procedures
- 90 Days to Establish the Support Obligation or to Complete Service of Process
- Seek a Voluntary Acknowledgment of Paternity
- Use State Support Guidelines to Establish Support Amount

## ***Paternity at Issue***

- Military assistance: Limited (essentially a civil matter).
  - Inform member of obligations
  - Refer to an attorney w/i JAG
  - Provide accurate, timely information to agency



Intro-56

What type of military assistance can you expect?

There is no established policy or mandate by DoD.

Military Treatment Facilities (MTFs) may assist with the test and chain of custody but are not compelled to and have to coordinate assistance with the MTF - this varies by location.

Military CCs - Under military regulations if a CC is aware of a paternity claim, they have to talk to the service member, refer to the JAG, and help if the service member wants to voluntarily acknowledge. CCs can order them to comply with court orders and grant them leave to do so. CCs have no authority to order the taking of blood or other bodily fluids for this purpose.

## **Commander's Assistance when Paternity is Admitted**

- Obtaining the appropriate housing/dependent allowance
- Filing for a voluntary allotment for the child
- Obtaining military ID card for child
- Obtaining leave, when requested, in order to marry child's mother



Intro-57

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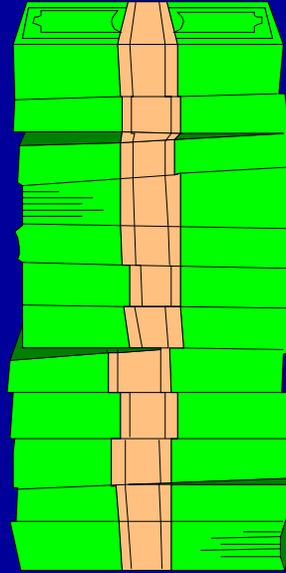
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When dealing with the military it is important to understand some basics about military pay. And some terminology.

- Basic Pay
- Allowances:  
Amt increases with rank
  - *BAH*:  
Basic Allowance for  
Housing
  - *BAS*:  
Basic Allowance for  
Subsistence



Intro-59

In addition to Base Pay military members receive allowances and special pay

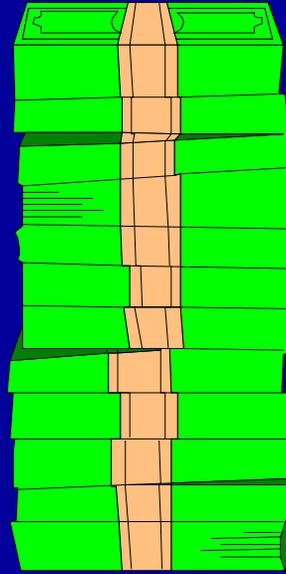
BAH - Basic Allowance for Housing is a new term effective 1 Jan 98. It incorporates the old terminology of BAQ - basic allowance for quarters (w/ & w/o dependents) and VHA - variable housing allowance which varies by locale

BAS - Basic allowance for subsistence - our food allowance

what portion is included as "income" in your state is a matter of state law

BAH table in appendix to handout

- Special Skills Pay:
  - flight pay
  - hazardous duty
  - sea, submarine duty
  - etc.
- Bonuses (lump sum, usually for re-enlisting)



Intro-60

Can any of you think of any other types of pay that may be considered in determining income for a member of the uniformed services? Hint - what about certain professional categories? The services routinely pay certain professionals such as doctors increased stipends.

## Summary

- Federal regulations governing paternity and order establishment
- Military policies and rules governing a commander's involvement in a IV-D paternity and support order establishment case
- Resources for obtaining complete earnings information for a military member
- Interpretation of a military member's *Leave and Earnings Statement*

# **Module 7**

## Military Enforcement Procedures

Intro-62

Module 6 slide 6-1

## ***Federal Enforcement Reg***

45 CFR § 303.6 – In all Cases:

- Monitor Compliance with Obligation
- Identify Date of Noncompliance
- Enforce Support Obligation by
  - Initiating Income Withholding
  - Taking Other Appropriate Action
  - Submitting Case for Tax Refund Offsets

Intro-63

## ***Federal Medical Support Enforcement Regs (45 CFR 303.31)***

Unless CP has satisfactory health insurance:

- Seek health insurance that is available to NCP at a “reasonable cost” in new or modified support orders.
- Seek such medical support even if health insurance of reasonable cost isn’t available at time of order.
- “Available at a Reasonable Cost” - Available through Employer or other Group
- Provide coverage notice to CP and Medicaid.
- Enforce available health ins when not provided.

Intro-64

## ***Income Subject to State Income Withholding***

- Military active duty pay (basic pay and certain bonuses, but not BAH and BAS/Sep Rats)
- Military reserve and retired pay
- Federal DoD civilian employee pay and retirement annuities
- “Any other remuneration for employment.”

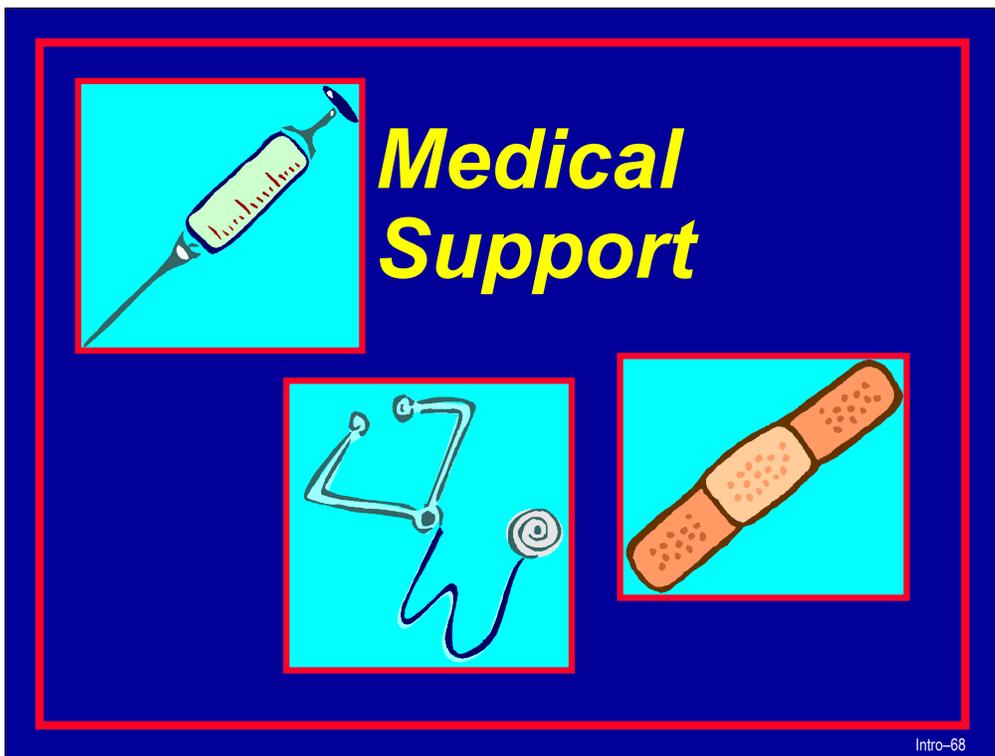


## ***State Income Withholding for Child and Spousal Support***

- In Most Cases, Withholding is Immediate
- No Need for Arrears or Advance Notice
- Intercepts More than Wages
- Can Use to Collect Current Support and Arrears
- Applies to Active, Reservists, Retirees, and Civilian Employees of the Military
- Requires Only Federal Notice/Order to Withhold Income for Child Support

## ***Federal Statutory Military Allotment***

- 42 U.S.C. 665
- Only applies to active duty members
- Requires 2 months amt of arrears
- Initiated with a notice by an authorized person
  - a IV-D agent or attorney
  - a court with authority to issue a support order or an agent of the court
- Collects amount necessary to comply with order



Medical coverage for family members of service members. In recent years, this has become one of the most frequently used and discussed aspects of support coverage within the CS enforcement community.

## ***Documents Needed to Enroll in DEERS***

- Legal paternity determination
- Birth certificate
- Support order
- Other



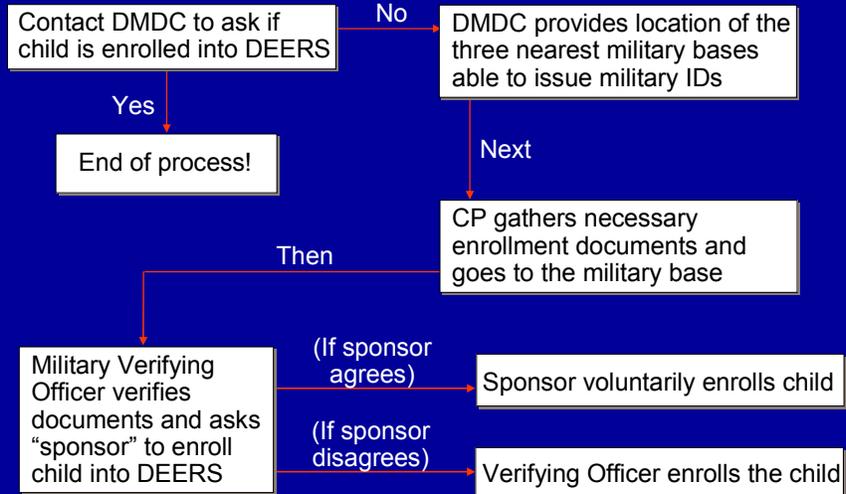
Intro-69

- Birth certificate
- Paternity determined
- support order

Beware - states that have administrative procedures for paternity and/or support.

The personnel clerks the service member is dealing with are not lawyers - they have a checklist - they don't necessarily understand an administrative order has the same force and effect of a court order. Send a letter with the statute stating that or get the JAG involved.

## DMDC Contact Flow Chart



## ***Summary***

- Federal IV-D child support enforcement regs
- Military policies/rules governing chain of command's involvement in enforcement of financial & medical support obligations
- Remedies/procedures for involuntarily attaching income of active duty, retired, and reserve military, and civilian DoD employees
  - State income withholding
  - Federal statutory military allotment
- Procedures for terminating enforcement

Intro-71

Module 6 slide 6-2